

Title	Brief Explanatory Note and Next Steps on the “Draft Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption”
Document	Prel. Doc. No 6 of March 2021
Author	Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (Working Group), with the support of the Permanent Bureau (PB) of the HCCH
Agenda Item	Item TBD
Mandate(s)	C&R No 24 of 2017 CGAP
Objective	To seek comments from Members and Contracting Parties to the draft Toolkit
Action to be Taken	For Decision <input type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input type="checkbox"/> For Action / Completion <input checked="" type="checkbox"/> For Information <input type="checkbox"/>
Annexes	Part I – Introduction to the Toolkit Part II – Fact Sheets on illicit practices Part III – Checklist to assist decision making by Central Authorities Part IV – Model Procedure to respond to illicit practices Part V – Guidelines on enhancing cooperation and coordination
Related Documents	Report of the Working Group (meeting of 8–10 July 2020) C&R of the Working Group (meeting of 21-23 May 2019) C&R of the Working Group (meeting of 13–15 October 2016)

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Annex – Draft Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption

PART I -	Introduction to the toolkit	Prel. Doc. No 6A of March 2021
PART II -	Fact Sheets on illicit practices	Prel. Doc. No 6B of March 2021
PART III -	Checklist to assist decision-making	
	by Central Authorities	Prel. Doc. No 6C of March 2021
PART IV -	Model Procedure to respond to	
	illicit practices	Prel. Doc. No 6D of March 2021
PART V -	Guidelines on enhancing cooperation	
	and coordination	Prel. Doc. No 6E of March 2021

Brief Explanatory Note and Next Steps on the “Draft Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption”

I. Introduction

- 1 Members of the HCCH and Contracting Parties to the *Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption* (1993 Adoption Convention) in their responses to the 2019 Questionnaire recommended that illicit practices in intercountry adoption be one of the main topics that should be discussed at the Fifth Meeting of the Special Commission (SC) on the practical operation of the 1993 Adoption Convention.¹ In particular, the SC is asked to revise the draft Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption (Toolkit) developed by the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (WG),² with a view to finalising the document and submitting it for final approval to the Council on General Affairs and Policy of the HCCH (CGAP).

II. Examples of possible questions for discussion at the SC meeting

- 2 The WG has worked collectively for several years discussing ways to assist States on how to identify, prevent and address illicit practices, and the best way to present the results of its discussions in a draft Toolkit. While the WG has made good progress, some issues still require further analysis. For example, should the Toolkit mention that States may wish to refer to it to respond to historic cases (*i.e.*, any general cases that took place preceding the entry into force of the Convention on the international level in 1995)?³ Should the Model Procedure include aspirational measures (e.g., national apologies)?⁴
- 3 In addition, the WG considered that a full and open discussion between Contracting Parties was necessary with a view to raising the current standards by qualifying certain practices as illicit and by including certain possible preventive actions. For example:
 - Fact Sheet (FS) 9 – Matching: Should contact between prospective adoptive parents (PAPs) and the child before matching be considered an illicit practice (and not only an enabling factor)?

All HCCH documents on adoption mentioned in this document are available on the HCCH website at < www.hcch.net > under “Adoption Section”.

1 See “Analysis of the responses to the 2019 Questionnaire on possible topics and format for the Fifth Meeting of the Special Commission to review the practical operation of the 1993 Adoption Convention”, Prel. Doc. No 2 of December 2019 for the attention of the Fifth Meeting of the SC on the practical operation of the 1993 Adoption Convention, para. 41.

2 The meetings of the WG were attended by participants representing 26 States (Member Contracting Parties: Australia, Belgium, Brazil, Canada, Chile, People’s Republic of China, Denmark, France, India, Ireland, Italy, Malta, Mexico, Netherlands, Norway, Peru, Philippines, Portugal, Sri Lanka, Switzerland, United States of America, Viet Nam; Member non-Contracting Party: Republic of Korea; non-Member Contracting Parties: Cabo Verde, Haiti and Togo) and four international organisations (UNICEF, ISS, ICAV and the Nordic Adoption Council), as well as members of the Permanent Bureau (PB).

3 While several States signed the Convention in 1993, according to its Art. 43, the date of entry into force of the Convention was 1 May 1995.

While the WG recommended that “the Toolkit should address how to respond to all cases of illicit practices, including those in non-Convention countries and those preceding the entry into force of the 1993 [Adoption] Convention” (see “Report of the WG on Preventing and Addressing Illicit Practices in Intercountry Adoption (meeting of 8–10 July 2020)”, Prel. Doc. No 12 of December 2020 for the attention of CGAP 2021 (“2020 WG Report”), para. 8; and “Conclusions and Recommendations of the WG on Preventing and Addressing Illicit Practices in Intercountry Adoption (meeting of 21–23 May 2019)”, Prel. Doc. No 6 of May 2019 for the attention of CGAP 2020 (“2019 WG Report”), C&R No 5), “some participants raised possible concerns as to applying the Toolkit to cases preceding the entry into force of the 1993 Adoption Convention” (see 2020 WG Report, para. 8).

4 See 2019 WG Report, para. 21.

- FS 10 – Records: Should the denial of access to origins be considered an illicit practice if no valid reasons can be provided?
- FS 11 – Financial Gain:
 - ⇒ Should all States be encouraged to prohibit contributions, donations and cooperation projects in the context of adoption (and not only ensure a clear separation with adoption)?
 - ⇒ Should contributions demanded by adoption accredited bodies (AABs) and child institutions from PAPs be considered an illicit practice (and not only an enabling factor)?
 - ⇒ Should medical and maintenance costs charged to PAPs after being matched with a child be considered an illicit practice (and not only an enabling factor)?⁵

III. Next steps

- 4 Considering the exceptional circumstances associated with the COVID-19 pandemic and its preference for an in-person meeting, in March 2021 CGAP agreed to provisionally reschedule the SC meeting to July 2022.⁶ In addition, it agreed that a further meeting of the WG should be held before the SC meeting, in order to enable further work on the Toolkit.⁷
- 5 Further to the directions given by CGAP, the following next steps are tentatively proposed:
- 1) **Comments on the Toolkit by 30 June 2021**: Members and Contracting Parties are kindly invited to submit comments on the Toolkit in writing (if possible, in a Word version in track changes, and if necessary, providing an explanation of the change in a comment) to the PB. Organisations that have participated at previous meetings of the SC may also submit comments.
All comments should be sent by e-mail to < secretariat@hcch.net > no later than **30 June 2021**.
Unless indicated otherwise, comments received may be shared with Members and the WG through the HCCH Secure Portal.
 - 2) **Online meeting of the WG** (second semester 2021): an online meeting of the WG will be scheduled to discuss further some of the outstanding issues mentioned above in section II and any major comments submitted in writing as indicated in number 1) above.
 - 3) **Revised version of the Toolkit for the attention of the SC** (early 2022): After the meeting of the WG and in light of the discussions and the comments received, the PB will update the draft Toolkit, which will then be transmitted to Members and Contracting Parties in advance of the SC.
 - 4) **SC meeting** (tentatively scheduled for early July 2022): participants to the SC will have an opportunity to raise any major issues that they still may have, in particular issues that may not have already been agreed upon by all Members and Contracting Parties, and comment on any new additions or modifications made in the Toolkit.
 - 5) **Final revision of the Toolkit** (end of 2022 / early 2023): after the SC, the PB will make a final revision of the draft Toolkit in light of the comments made at that SC meeting. If needed, the revised Toolkit will be circulated one last time.
 - 6) **Approval of the Toolkit by CGAP**: the final version of the Toolkit will be submitted to the 2023 CGAP meeting for approval.
- 6 In order to ensure a constructive approach, informed discussions, and an efficient use of resources, **Members and Contracting Parties are kindly encouraged as much as possible to provide comments at this preliminary stage of the drafting (by 30 June 2021)**. Comments to be submitted at later

⁵ See 2020 WG Report, para. 14.

⁶ CGAP 2021, C&D 23.

⁷ CGAP 2021, C&D 24.

stages will then focus on issues that have not been agreed upon already and on new proposals or modifications made to the draft Toolkit.